

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ANTHONY QUINN DUCKETT, #12978-078 §

VS. §

CIVIL ACTION NO. 4:09cv589

CRIM. NO. 4:05cr173(16)

UNITED STATES OF AMERICA §

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Amos L. Mazzant, who issued a Report and Recommendation concluding that the motion to vacate, set aside, or correct sentence should be denied and dismissed as time-barred. Movant has filed objections.

The Report of the Magistrate Judge, which contains his proposed findings of fact and recommendations for the disposition of such action, has been presented for consideration. Having made a *de novo* review of the objections raised by Movant to the Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections of Movant are without merit. Based on his objections, Movant is under the erroneous impression that his motion to reduce sentence filed pursuant to § 3852 and his motion for relief from judgment filed pursuant to Rule 60(b) extended or tolled the deadline. He also seems to believe that his limitations deadline was extended when he filed the instant motion pursuant to § 2255 and was given thirty days in which to submit it on the standardized form. The law is clear that a modification of sentence pursuant to § 3582 does not affect the finality of judgment. *See Abbot v. United States*, 1998 WL

229652 at *2 (E.D. Pa. 1998). “Notwithstanding the fact that a sentence to imprisonment can subsequently be – (1) modified pursuant to the provisions of subsection (c) . . . a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes. 18 U.S.C. § 3582(b). Furthermore, in Movant’s filing and pendency of a rule 60 motion, he has not shown an “impediment” that would have prevented him from timely filing his § 2255 motion. Movant’s objections are without merit. Accordingly, it is

ORDERED that the motion to vacate, set aside, or correct sentence is **DENIED** and Movant’s case is **DISMISSED** with prejudice. Additionally, it is

ORDERED that all motions not previously ruled on are hereby **DENIED**.

It is SO ORDERED.

SIGNED this 14th day of February, 2012.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE